

By: \_\_\_\_\_ .B. No. \_\_\_\_\_

Substitute the following for \_\_\_\_B. No. \_\_\_\_\_:

By: \_\_\_\_\_ C.S.\_\_\_\_B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the certification by the Public Utility Commission of  
3 Texas of an entity to act as the Texas Emergency Power Reserve.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 11.003(16), Utilities Code, is amended  
6 to read as follows:

7 (16) "Rate" includes:

8 (A) any compensation, tariff, charge, fare,  
9 toll, rental, or classification that is directly or indirectly  
10 demanded, observed, charged, or collected by a public utility or  
11 the Texas Emergency Power Reserve for a service, product, or  
12 commodity described in the definition of utility in Section 31.002  
13 or 51.002; and

14 (B) a rule, practice, or contract affecting the  
15 compensation, tariff, charge, fare, toll, rental, or  
16 classification.

17 SECTION 2. Section 31.002, Utilities Code, is amended by  
18 amending Subdivisions (6), (10), (15), (19), and (20) and adding  
19 Subdivisions (9-a), (9-b), (15-a), and (18-a) to read as follows:

20 (6) "Electric utility" means a person or river  
21 authority that owns or operates for compensation in this state  
22 equipment or facilities to produce, generate, transmit,  
23 distribute, sell, or furnish electricity in this state. The term  
24 includes a lessee, trustee, or receiver of an electric utility and a

1 recreational vehicle park owner who does not comply with Subchapter  
2 C, Chapter 184, with regard to the metered sale of electricity at  
3 the recreational vehicle park. The term does not include:

- 4 (A) a municipal corporation;
- 5 (B) a qualifying facility;
- 6 (C) a power generation company;
- 7 (D) an exempt wholesale generator;
- 8 (E) a power marketer;
- 9 (F) a corporation described by Section 32.053 to  
10 the extent the corporation sells electricity exclusively at  
11 wholesale and not to the ultimate consumer;
- 12 (G) an electric cooperative;
- 13 (H) a retail electric provider;
- 14 (I) this state or an agency of this state; ~~or~~
- 15 (J) the Texas Emergency Power Reserve; or
- 16 (K) a person not otherwise an electric utility

17 who:

18 (i) furnishes an electric service or  
19 commodity only to itself, its employees, or its tenants as an  
20 incident of employment or tenancy, if that service or commodity is  
21 not resold to or used by others;

22 (ii) owns or operates in this state  
23 equipment or facilities to produce, generate, transmit,  
24 distribute, sell, or furnish electric energy to an electric  
25 utility, if the equipment or facilities are used primarily to  
26 produce and generate electric energy for consumption by that  
27 person; or

1 (iii) owns or operates in this state a  
2 recreational vehicle park that provides metered electric service in  
3 accordance with Subchapter C, Chapter 184.

4 (9-a) "Phase 1 reliability asset" means a reliability  
5 asset associated with the first 10 gigawatts of generation capacity  
6 owned by the Texas Emergency Power Reserve.

7 (9-b) "Phase 2 reliability asset" means a reliability  
8 asset owned by the Texas Emergency Power Reserve that is not a phase  
9 1 reliability asset.

10 (10) "Power generation company:"

11 (A) means a person, including a person who owns  
12 or operates a distributed natural gas generation facility, that:

13 (i) [~~(A)~~] generates electricity that is  
14 intended to be sold at wholesale, including the owner or operator of  
15 electric energy storage equipment or facilities to which Subchapter  
16 E, Chapter 35, applies;

17 (ii) [~~(B)~~] does not own a transmission or  
18 distribution facility in this state other than an essential  
19 interconnecting facility, a facility not dedicated to public use,  
20 or a facility otherwise excluded from the definition of "electric  
21 utility" under this section; and

22 (iii) [~~(C)~~] does not have a certificated  
23 service area, although its affiliated electric utility or  
24 transmission and distribution utility may have a certificated  
25 service area; and

26 (B) does not include the Texas Emergency Power  
27 Reserve.

1 (15) "Rate" includes:

2 (A) a compensation, tariff, charge, fare, toll,  
3 rental, or classification that is directly or indirectly demanded,  
4 observed, charged, or collected by an electric utility for a  
5 service, product, or commodity described in the definition of  
6 electric utility in this section and a rule, practice, or contract  
7 affecting the compensation, tariff, charge, fare, toll, rental, or  
8 classification that must be approved by a regulatory authority; or

9 (B) Texas Emergency Power Reserve charges.

10 (15-a) "Reliability asset" means a generation asset  
11 owned by the Texas Emergency Power Reserve and available to provide  
12 power when dispatched as described by Section 38.074, including a  
13 weatherized natural gas turbine with on-site liquefied natural gas  
14 tanks located in the ERCOT power region near a major load center,  
15 gas pipeline, or electric transmission line.

16 (18-a) "Texas Emergency Power Reserve" means the  
17 entity certified under Section 39.360.

18 (19) "Transmission and distribution utility" means a  
19 person or river authority that owns or operates for compensation in  
20 this state equipment or facilities to transmit or distribute  
21 electricity, except for facilities necessary to interconnect a  
22 generation facility with the transmission or distribution network,  
23 a facility not dedicated to public use, or a facility otherwise  
24 excluded from the definition of "electric utility" under this  
25 section, in a qualifying power region certified under Section  
26 39.152, but does not include a municipally owned utility, ~~or~~ an  
27 electric cooperative, or the Texas Emergency Power Reserve.

1           (20) "Transmission service" includes construction or  
2 enlargement of facilities, transmission over distribution  
3 facilities, control area services, scheduling resources,  
4 regulation services, reactive power support, voltage control,  
5 provision of operating reserves, and any other associated  
6 electrical service the commission determines appropriate, except  
7 that, on and after the implementation of customer choice, control  
8 area services, scheduling resources, regulation services,  
9 provision of operating reserves, and reactive power support,  
10 voltage control, ~~and~~ other services provided by generation  
11 resources, and services provided by the Texas Emergency Power  
12 Reserve are not "transmission service."

13           SECTION 3. Section 33.001, Utilities Code, is amended by  
14 adding Subsection (c) to read as follows:

15           (c) The governing body of a municipality does not have  
16 jurisdiction over the Texas Emergency Power Reserve.

17           SECTION 4. Section 33.008(a), Utilities Code, is amended to  
18 read as follows:

19           (a) Following the end of the freeze period for a  
20 municipality that has been served by an electric utility, and  
21 following the date a municipally owned utility or an electric  
22 cooperative has implemented customer choice for a municipality that  
23 has been served by that municipally owned utility or electric  
24 cooperative, a municipality may impose on an electric utility,  
25 transmission and distribution utility, municipally owned utility,  
26 or electric cooperative, as appropriate, that provides  
27 distribution service within the municipality a reasonable charge as

1 specified in Subsection (b) for the use of a municipal street,  
2 alley, or public way to deliver electricity to a retail customer. A  
3 municipality may not impose a charge on:

4 (1) an electric utility, or transmission and  
5 distribution utility, municipally owned utility, or electric  
6 cooperative for electric service provided outside the  
7 municipality;

8 (2) a qualifying facility;

9 (3) an exempt wholesale generator;

10 (4) a power marketer;

11 (5) a retail electric provider;

12 (6) a power generation company;

13 (7) a person that generates electricity on and after  
14 January 1, 2002; [~~or~~]

15 (8) an aggregator, as that term is defined by Section  
16 39.353; or

17 (9) the Texas Emergency Power Reserve.

18 SECTION 5. Section 35.004, Utilities Code, is amended by  
19 amending Subsections (b), (c), and (e) and adding Subsections (c-1)  
20 and (c-2) to read as follows:

21 (b) The commission shall ensure that an electric utility or  
22 transmission and distribution utility provides nondiscriminatory  
23 access to wholesale transmission service for qualifying  
24 facilities, exempt wholesale generators, power marketers, power  
25 generation companies, retail electric providers, the Texas  
26 Emergency Power Reserve, and other electric utilities or  
27 transmission and distribution utilities.

1 (c) When an electric utility, electric cooperative, or  
2 transmission and distribution utility provides wholesale  
3 transmission service within ERCOT at the request of a third party,  
4 the commission shall ensure that the utility recovers the utility's  
5 reasonable costs in providing wholesale transmission services  
6 necessary for the transaction from the entity for which the  
7 transmission is provided so that the utility's other customers do  
8 not bear the costs of the service. The Texas Emergency Power  
9 Reserve is not a third party for the purposes of this subsection.

10 (c-1) The costs of transmission and distribution utility  
11 service for the Texas Emergency Power Reserve must be allocated to  
12 all retail customers in the ERCOT power region.

13 (c-2) The Texas Emergency Power Reserve will not bear costs  
14 related to the interconnection of a phase 1 reliability asset or a  
15 phase 2 reliability asset.

16 (e) The commission shall ensure that ancillary services  
17 necessary to facilitate the transmission of electric energy are  
18 available at reasonable prices with terms and conditions that are  
19 not unreasonably preferential, prejudicial, discriminatory,  
20 predatory, or anticompetitive. In this subsection, "ancillary  
21 services" means services necessary to facilitate the transmission  
22 of electric energy including load following, standby power, backup  
23 power, reactive power, and any other services as the commission may  
24 determine by rule. Services provided by the Texas Emergency Power  
25 Reserve when deployed under Section 38.074 are not considered to be  
26 ancillary services. On the introduction of customer choice in the  
27 ERCOT power region, acquisition of generation-related ancillary

1 services on a nondiscriminatory basis by the independent  
2 organization in ERCOT on behalf of entities selling electricity at  
3 retail shall be deemed to meet the requirements of this subsection.

4 SECTION 6. Section 35.005, Utilities Code, is amended by  
5 amending Subsection (a) and adding Subsections (d) and (e) to read  
6 as follows:

7 (a) The commission may require an electric utility to  
8 provide transmission service at wholesale to another electric  
9 utility, a qualifying facility, an exempt wholesale generator, the  
10 Texas Emergency Power Reserve, or a power marketer and may  
11 determine whether terms for the transmission service are  
12 reasonable.

13 (d) To ensure customers in the ERCOT power region can  
14 receive promptly the benefits associated with the certification  
15 under Section 39.360 of an entity as the Texas Emergency Power  
16 Reserve, the independent organization certified under Section  
17 39.151 for the ERCOT power region shall work with transmission  
18 service providers to ensure that each reliability asset is fully  
19 interconnected in the ERCOT power region not later than the 270th  
20 day after the date the interconnection agreement is executed. An  
21 electric utility that enters into an interconnection agreement for  
22 a reliability asset shall complete construction of any facilities  
23 necessary to interconnect the reliability asset not later than the  
24 270th day after the date the interconnection agreement is executed.  
25 The electric utility may not recover its reasonable costs of  
26 constructing the facilities during the period that begins on the  
27 271st day after the date the interconnection agreement is executed

1 and ending on the date the construction of the facilities necessary  
2 to interconnect the reliability asset is complete.

3 (e) Notwithstanding Subsection (d), the commission may  
4 extend the 270-day deadline established by that subsection after  
5 notice, hearing, and a determination on a showing of good cause that  
6 fully interconnecting the reliability asset before the 270th day is  
7 not feasible.

8 SECTION 7. Section 36.001, Utilities Code, is amended by  
9 adding Subsection (c) to read as follows:

10 (c) The commission may regulate the rates of the Texas  
11 Emergency Power Reserve related to each phase 1 reliability asset  
12 and phase 2 reliability asset, except that the commission may  
13 regulate rates related to a phase 1 reliability asset only to the  
14 extent provided by Subchapter J. No other provision of this chapter  
15 applies to rates related to a phase 1 reliability asset.

16 SECTION 8. Chapter 36, Utilities Code, is amended by adding  
17 Subchapter J to read as follows:

18 SUBCHAPTER J. TEXAS EMERGENCY POWER RESERVE

19 Sec. 36.501. RATES FOR RELIABILITY ASSETS. (a) The  
20 commission shall ensure that the entity certified as the Texas  
21 Emergency Power Reserve under Section 39.360 receives a regulated  
22 rate that recognizes the critical service the reserve provides to  
23 customers in the ERCOT power region.

24 (b) The rate must be based on actual costs, including  
25 variable costs, allowance for funds used during construction, and  
26 all costs of constructing, owning, operating, and maintaining  
27 reliability assets. The Texas Emergency Power Reserve is entitled

1 to recover the actual costs associated with each reliability asset.

2 (c) In determining the rate, the commission shall consider  
3 the critical service the Texas Emergency Power Reserve provides to  
4 all customers in the ERCOT power region.

5 (d) The commission shall allocate the rate to each electric  
6 utility, municipally owned utility, and electric cooperative in the  
7 ERCOT power region, based on its proportionate share of overall  
8 annual system load. The rate may not be based on peak demand.

9 (e) Each retail electric provider, municipally owned  
10 utility, and electric cooperative in the ERCOT power region shall:

11 (1) collect from its customers in the ERCOT power  
12 region and remit to the independent organization certified under  
13 Section 39.151 the commission-approved rate; and

14 (2) allocate the rate to each customer based on the  
15 customer's annual system demand, not peak demand.

16 (f) The independent organization certified under Section  
17 39.151 shall remit the rate revenue to the Texas Emergency Power  
18 Reserve monthly.

19 Sec. 36.502. RATES FOR PHASE 1 RELIABILITY ASSET. (a) Not  
20 later than the 90th day after the date the Texas Emergency Power  
21 Reserve submits to the commission a rate request for a phase 1  
22 reliability asset, the commission shall approve the rates and order  
23 each retail electric provider, municipally owned utility, and  
24 electric cooperative in the ERCOT power region , beginning on the  
25 commercial operation date of each phase 1 reliability asset, to:

26 (1) collect the rate from the provider's, utility's,  
27 or cooperative's customers in the ERCOT power region; and

1           (2) remit the payment to the independent organization  
2 certified under Section 39.151 monthly.

3           (b) The commission shall establish rates for each phase 1  
4 reliability asset to include:

5           (1) not less than a 9.30 percent return on equity;

6           (2) a 50-50 debt to equity ratio;

7           (3) a 40-year depreciable life;

8           (4) allowance for funds used during construction;

9           (5) costs associated with ownership, operations,  
10 maintenance, fuel, and other variable costs;

11           (6) reasonably incurred attorney's fees; and

12           (7) the estimated costs of constructing the phase 1  
13 reliability asset before construction has begun and, after the  
14 phase 1 reliability asset is complete, the actual cost of the asset  
15 as described by Section 36.501(b).

16           (c) Not later than the 90th day after the commercial  
17 operation date of a phase 1 reliability asset, the commission  
18 shall:

19           (1) adjust the previously established rates for the  
20 asset to reflect the actual construction costs; and

21           (2) reconcile any over-collections or  
22 under-collections.

23           (d) The commission shall adjust the rate for each phase 1  
24 reliability asset annually to reflect changes to the costs of  
25 ownership, operations and maintenance, and variable costs,  
26 including fuel costs and interest rates, to reflect the actual  
27 costs as described by Section 36.501(b) incurred in the preceding

1 year. The review for a rate adjustment under this subsection is  
2 limited to verifying the accuracy of the incurred costs.

3 Sec. 36.503. RATES FOR PHASE 2 RELIABILITY ASSET. The  
4 commission shall determine the rates for phase 2 reliability assets  
5 based on the principles provided by Section 36.501 and the actual  
6 costs, as described by Section 36.501(b), incurred to construct,  
7 own, operate, and maintain the phase 2 reliability asset, including  
8 variable costs, using the ratemaking principles and procedures  
9 provided by this chapter, while recognizing the critical  
10 reliability function being provided by the Phase 2 reliability  
11 asset.

12 Sec. 36.504. STRANDED COST RECOVERY. (a) In this section:

13 (1) "Net book value of reliability assets" means the  
14 generation-related electric plant in service, less accumulated  
15 depreciation other than depreciation related to mitigation, plus  
16 generation-related construction work in progress, plant held for  
17 future use, and fuel inventories, reduced by net mitigation and any  
18 public funds received by the Texas Emergency Power Reserve through  
19 state benefit programs.

20 (2) "Stranded costs" means:

21 (A) the Texas Emergency Power Reserve's actual  
22 costs of building, operating, and maintaining reliability assets at  
23 the time of disposition; and

24 (B) any other costs associated with establishing  
25 the Texas Emergency Power Reserve that have not been previously  
26 recovered from ratepayers.

27 (b) If the commission revokes a certificate issued under

1 Section 39.360, the entity that formerly held the certificate may  
2 recover in the manner provided by this section all of the entity's  
3 net, variable, nonmitigable stranded costs incurred in  
4 constructing reliability assets, purchasing fuel, and providing  
5 electric generation service in the ERCOT power region.

6 (c) If the commission determines that a reliability asset is  
7 no longer able to serve the purpose described by Section 38.074, the  
8 Texas Emergency Power Reserve may recover in the manner provided by  
9 this section the entity's net, variable, nonmitigable stranded  
10 costs that were incurred in constructing the reliability asset,  
11 purchasing fuel for the asset, and providing electric generation  
12 service in the ERCOT power region with the asset.

13 (d) To recover stranded costs under this section, an entity  
14 that is decertified or serving as the Texas Emergency Power  
15 Reserve, as applicable, must submit to the commission an  
16 application for recovery of the costs not later than the 30th  
17 calendar day after the date the commission issues the order that  
18 revokes the certificate under Subsection (b) or the date of the  
19 commission's determination described by Subsection (c), as  
20 applicable. The application must include a description, supported  
21 by the sworn affidavits of a corporate officer of the entity and a  
22 stranded cost expert who has at least 10 years of professional  
23 experience in the electric industry in the ERCOT power region, of  
24 the following:

25 (1) the actual cost of each relevant reliability asset  
26 completed by the entity and each relevant reliability asset under  
27 construction by the entity at the time of decertification;

1           (2) the total net book value of each relevant  
2 reliability asset; and

3           (3) the expected rate of return on the remaining  
4 depreciable life of each relevant reliability asset.

5           (e) Not later than the 20th calendar day after the date an  
6 application is submitted to the commission under Subsection (d),  
7 commission staff may file a motion with the commission stating the  
8 staff's finding that the application is materially deficient. The  
9 motion must include a detailed explanation of the claimed material  
10 deficiencies. If the presiding officer of the commission  
11 determines that the application is materially deficient:

12           (1) the entity that is decertified or serving as the  
13 Texas Emergency Power Reserve, as applicable, may not recover the  
14 stranded costs unless the entity submits corrections to the  
15 commission not later than the 30th calendar day after the date the  
16 presiding officer makes the determination of deficiency; and

17           (2) the deadline established by Subsection (f) is  
18 extended one day for each day in which:

19                   (A) the application is materially deficient, as  
20 determined by the presiding officer of the commission; and

21                   (B) the decertified entity has not yet corrected  
22 the deficiency.

23           (f) The commission shall issue a final order to award  
24 recovery of stranded costs to the entity that is decertified or  
25 serving as the Texas Emergency Power Reserve, as applicable, not  
26 later than the 90th calendar day after the date the entity files a  
27 complete application.

1       (g) A commission order granting recovery of stranded costs  
2 under this section must:

3           (1) allocate collection of the stranded costs among  
4 each electric utility, municipally owned utility, and electric  
5 cooperative providing service in the ERCOT power region in the  
6 manner provided by Section 36.501;

7           (2) order each electric utility, municipally owned  
8 utility, and electric cooperative in the ERCOT power region to  
9 include a rider on the utility's or cooperative's tariff to allow  
10 for collection of the stranded costs from customers in the ERCOT  
11 power region allocated based on yearly consumption;

12           (3) order recovery of the stranded costs from all  
13 wholesale or retail customers of electric utilities, municipally  
14 owned utilities, and electric cooperatives that exist on the date  
15 of the order and any new customers served during the recovery  
16 period; and

17           (4) prohibit a wholesale or retail customer of an  
18 electric utility, municipally owned utility, or electric  
19 cooperative in the ERCOT power region from avoiding the stranded  
20 cost recovery charges.

21       (h) For the purposes of establishing stranded cost recovery  
22 rates in the rider under Subsection (g), customers must be  
23 classified according to the rate classes established by the most  
24 recently completed base-rate proceeding of each electric utility,  
25 municipally owned utility, or electric cooperative.

26       (i) A stranded cost recovery rider established under this  
27 section may not be in effect for more than eight years and must

1 provide for the recovery of the full amount of stranded costs  
2 awarded by the commission during that period. If after five years  
3 of collection under the rider the full amount owed to the entity  
4 that is decertified or serving as the Texas Emergency Power Reserve  
5 has not been recovered, the commission shall initiate a proceeding  
6 to adjust the amount of the rider to ensure full recovery before the  
7 expiration of the eight-year period.

8 SECTION 9. Subchapter D, Chapter 38, Utilities Code, is  
9 amended by adding Section 38.074 to read as follows:

10 Sec. 38.074. TEXAS EMERGENCY POWER RESERVE. (a) To ensure  
11 the reliability of electricity service in the ERCOT power region,  
12 the commission shall certify a single entity as the Texas Emergency  
13 Power Reserve in the manner provided by Section 39.360.

14 (b) The Texas Emergency Power Reserve shall own reliability  
15 assets that may be dispatched by the independent organization  
16 certified under Section 39.151 for the ERCOT power region:

17 (1) in times of extreme emergency or natural disaster  
18 as determined by the independent organization or the commission; or

19 (2) up to 336 hours per year for testing purposes and  
20 as directed by the independent organization.

21 SECTION 10. Section 39.154, Utilities Code, is amended by  
22 adding Subsection (f) to read as follows:

23 (f) For purposes of this section and Section 39.158, a  
24 reliability asset is not considered to be installed generation  
25 capacity.

26 SECTION 11. Section 39.155, Utilities Code, is amended by  
27 amending Subsections (a) and (b) and adding Subsection (e) to read

1 as follows:

2 (a) Each person, municipally owned utility, electric  
3 cooperative, and river authority that owns generation facilities  
4 and offers electricity for sale in this state, other than the Texas  
5 Emergency Power Reserve, shall report to the commission its  
6 installed generation capacity, the total amount of capacity  
7 available for sale to others, the total amount of capacity under  
8 contract to others, the total amount of capacity dedicated to its  
9 own use, its annual wholesale power sales in the state, its annual  
10 retail power sales in the state, and any other information  
11 necessary for the commission to assess market power or the  
12 development of a competitive retail market in the state. The  
13 commission shall by rule prescribe the nature and detail of the  
14 reporting requirements and shall administer those reporting  
15 requirements in a manner that ensures the confidentiality of  
16 competitively sensitive information.

17 (b) The ERCOT independent system operator shall submit an  
18 annual report to the commission identifying existing and potential  
19 transmission and distribution constraints and system needs within  
20 ERCOT, alternatives for meeting system needs, and recommendations  
21 for meeting system needs. The first report shall be submitted on or  
22 before October 1, 1999. Subsequent reports shall be submitted by  
23 January 15 of each year or as determined necessary by the  
24 commission. The reports required by this subsection must include a  
25 section identifying existing and potential transmission and  
26 distribution constraints that could affect the availability of any  
27 reliability asset and include alternatives for meeting identified

1 needs.

2 (e) The Texas Emergency Power Reserve is not considered to  
3 have market power when dispatched by an order of the independent  
4 organization certified under Section 39.151 for the ERCOT power  
5 region.

6 SECTION 12. Subchapter H, Chapter 39, Utilities Code, is  
7 amended by adding Section 39.360 to read as follows:

8 Sec. 39.360. CERTIFICATION OF TEXAS EMERGENCY POWER  
9 RESERVE. (a) The commission may certify an entity to operate as  
10 the Texas Emergency Power Reserve. The commission may not certify  
11 more than one entity under this section.

12 (b) An entity may not operate as the Texas Emergency Power  
13 Reserve unless the entity is certified by the commission as the  
14 Texas Emergency Power Reserve under this section.

15 (c) The commission shall:

16 (1) issue a request for proposals from qualified  
17 applicants to serve as the Texas Emergency Power Reserve; and

18 (2) if the commission receives at least one  
19 application from a qualified applicant in response to the request  
20 described by Subdivision (1) before the expiration of the period  
21 provided by Subsection (d), select and certify a qualified  
22 applicant not later than the 28th day after the date the commission  
23 issues the request.

24 (d) An applicant must submit an application under  
25 Subsection (c) not later than the 14th day after the date the  
26 commission issues the request for proposals under that subsection.

27 (e) If at any time during the selection process at least one

1 commissioner position is vacant, the executive director:

2 (1) shall ensure that the selection and certification  
3 process is conducted in a timely manner; and

4 (2) may make the final selection.

5 (f) To be certified as the Texas Emergency Power Reserve, an  
6 applicant must:

7 (1) establish financial stability by demonstrating  
8 that:

9 (A) the applicant or the applicant's parent  
10 company has greater than \$100 billion of total assets;

11 (B) the applicant or the applicant's parent  
12 company has a credit rating of "A" from a major credit rating  
13 agency;

14 (C) the applicant or the applicant's parent  
15 company is able to fund the investment with cash on hand and no  
16 financing contingency;

17 (D) the applicant will seek a revenue requirement  
18 that is the lesser of \$8.3 billion or actual costs as described in  
19 Section 36.501;

20 (E) the applicant is able to close on any  
21 financing not later than the 60th day after the date of securing  
22 certification and contract execution; and

23 (F) the applicant will agree to a return on  
24 equity of 9.30 percent and an equal debt-to-equity ratio;

25 (2) establish industry expertise by demonstrating  
26 that:

27 (A) the applicant or the applicant's parent

1 company has experience in owning and operating liquefied natural  
2 gas facilities;

3 (B) the applicant or the applicant's parent  
4 company owns or operates electric generation assets totaling at  
5 least 30,000 megawatts;

6 (C) the applicant or the applicant's parent  
7 company has an Occupational Safety and Health Administration  
8 incident rate in the top quartile for electric utilities;

9 (D) the applicant or other entities supported by  
10 the applicant's parent company have been International  
11 Organization for Standardization 27001 certified for at least the  
12 last three years; and

13 (E) the newly certified entity will be  
14 International Organization for Standardization 27001 certified;

15 (3) establish project quality standards by  
16 demonstrating that:

17 (A) the applicant is able to provide a parent  
18 performance guarantee of \$4 billion to backstop the obligation to  
19 operate when called on; and

20 (B) each reliability asset will be in operation  
21 not later than the last day of the 30th month after certification,  
22 unless interconnection delays require a later operation date; and

23 (4) establish customer friendly solutions by  
24 committing:

25 (A) that any net revenue earned during testing or  
26 operating would be for the benefit of the ERCOT power region;

27 (B) not to sell any reliability asset over the

1 life of the reliability asset while the applicant is certified as  
2 the Texas Emergency Power Reserve; and

3 (C) that the siting of reliability assets will  
4 maximize the effectiveness of 10 gigawatts of new generation  
5 capacity.

6 (g) The commission shall certify an entity as the Texas  
7 Emergency Power Reserve that submits a qualifying application that  
8 includes:

9 (1) proof that the requirements of Subsection (f) have  
10 been met;

11 (2) a description of the location or proposed location  
12 of each reliability asset;

13 (3) a commitment to construct, own, operate, and  
14 maintain reliability assets for a time period not less than the  
15 useful life of the assets;

16 (4) a commitment that the reliability assets will  
17 include at each site liquefied natural gas tanks with capacity to  
18 provide fuel for generation at full load for not less than 168  
19 continuous hours and that the tanks will be properly maintained;

20 (5) an affidavit affirming that the Texas Emergency  
21 Power Reserve will guarantee that the reliability assets will be  
22 available to dispatch in a manner that provides the independent  
23 organization certified under Section 39.151 for the ERCOT power  
24 region, in times of emergency, natural disaster, and testing, with  
25 access to power for up to seven consecutive days;

26 (6) proof of the posting of a \$4 billion parent  
27 performance guarantee that during each summer and winter season the

1 independent organization certified under Section 39.151 for the  
2 ERCOT power region or the commission may draw upon, up to \$1 billion  
3 per summer or winter season, if a reliability asset does not perform  
4 and performance is not excused under Subsection (k); and

5 (7) proof of at least an "A" rating from a major credit  
6 rating agency.

7 (h) The commission shall provide a process to amend the  
8 certificate to account for the addition of any new reliability  
9 asset.

10 (i) The commission may not revoke the certificate unless  
11 after notice and an opportunity for hearing before the commission,  
12 the commission finds the Texas Emergency Power Reserve wilfully and  
13 without excuse failed to dispatch sufficient reliability assets  
14 after the determination of a natural disaster or other emergency by  
15 the independent organization certified under Section 39.151 for the  
16 ERCOT power region or the commission.

17 (j) The Texas Emergency Power Reserve shall comply with the  
18 reliability standards adopted by the independent organization  
19 certified under Section 39.151 for the ERCOT power region to ensure  
20 the reliability of the ERCOT region.

21 (k) The commission or the independent organization  
22 certified under Section 39.151 for the ERCOT power region may not  
23 draw upon a parent performance guarantee provided by the Texas  
24 Emergency Power Reserve and may not impose a fine or penalty on the  
25 Texas Emergency Power Reserve for failure to provide service if the  
26 inability to provide service is wholly or partly the result of:

27 (1) the actions of an electric utility or transmission

1 service provider;

2 (2) the actions of the independent organization  
3 certified under Section 39.151 for the ERCOT power region;

4 (3) equipment failure beyond the control of the Texas  
5 Emergency Power Reserve, when the equipment failure could not  
6 reasonably have been predicted or remedied; or

7 (4) scheduled routine maintenance.

8 (1) The commission may not require a bond, letter of credit,  
9 or other security from the Texas Emergency Power Reserve except for  
10 the parent performance guarantee described by this section and may  
11 not require the expansion of the parent performance guarantee. If  
12 drawn upon, the parent performance guarantee may not be required to  
13 be replenished or expanded. The parent performance guarantee is  
14 capped at \$4 billion in total throughout the time the Texas  
15 Emergency Power Reserve is certified by the commission.

16 SECTION 13. On the effective date of this Act or as soon as  
17 practicable after that date, the Public Utility Commission of Texas  
18 shall issue the request for proposals required by Section  
19 39.360(c), Utilities Code, as added by this Act.

20 SECTION 14. The Public Utility Commission of Texas shall  
21 adopt any rules necessary to implement this Act not later than  
22 January 1, 2022.

23 SECTION 15. This Act takes effect immediately if it  
24 receives a vote of two-thirds of all the members elected to each  
25 house, as provided by Section 39, Article III, Texas Constitution.  
26 If this Act does not receive the vote necessary for immediate  
27 effect, this Act takes effect September 1, 2021.